IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 19652 of 2004(M)

OS.517/1994 of MUNSIFF COURT, MANJERI
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PETITIONER:

UNNIMOYIN, SON OF PARAMBAN KANNAN
ISMAYIL, CHEEKODE AMSOM, OMANUR DESOM,
P.O.OMANUR, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SMT.M.R.MINI
SMT.MEENA.A.
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN

RESPONDENTS:
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1. ASSAIN, SON OF PARAMBAN KANNAN
ISMAYIL, CHEEKODE AMSOM, OMANUR DESOM,
P.O.OMANUR, ERNAD TALUK, MALAPPURAM DISTRICT.

2. MAIMOONATH, W/O.UNNIMOYIN,
CHEEKODE AMSOM, OMANUR DESOM,
P.O.OMANUR, ERNAD TALUK, MALAPPURAM DISTRICT.

R1 BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
R2 BY ADV. SMT.PRABHA R.MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 19652 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE AFFIDAVIT DT.4.3.04 FILED BY THE PETITIONER IN SUPPORT OF IA NO.623 OF 2004 IN OS NO.517 OF 1994, MUNSIFF'S COURT, MANJERI.

EXT.P2 : TRUE COPY OF THE OBJECTION DATED 12.3.04 FILED BY THE POWER OF ATTORNEY HOLDER OF THE FIRST RESPONDENT HEREIN IN IA NO.623 OF 2004 IN OS NO.517 OF 1994, MUNSIFF'S COURT, MANJERI.

EXT.P3 : TRUE COPY OF THE ORDER DATED 2.6.04 IN IA NO.623 OF 2004 IN OS NO.517 OF 1994, MUNSIFF'S COURT MANJERI.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No.19652 OF 2004

Dated this the 20th day of August, 2007

JUDGMENT

Heard Sri.R.Rajesh Kormath, learned counsel for the petitioner and Smt.Prabha R.Menon, learned counsel for the respondent. Impugned in this Writ Petition under Article 227 is Ext.P3 order passed by the learned Munsiff on an application for remittance of the commissioner's report and plan. Ext.P2 is the objection which was filed by the respondent who was the plaintiff in a pending cross suit OS No.60 of 1995. Ext.P2 will show that there was no serious opposition from the side of the respondent in allowing the application. The respondent only wanted the commissioner to identify his properties also and to show the same separately after measuring the same on the basis of documents. He also sought leave of the court to submit work memo before the Commissioner.

My attention was drawn by the learned counsel for the respondent to the Commissioner's report. I find force in the submissions that on this report it may not be possible for the court to take a correct decision in the two suits which are being tried jointly on the basis of this report and relative plan. In fact, one of the reasons stated by the learned Munsiff in Ext.P3 is that the petitioner has taken no steps for examining the

commissioner. According to the court, the prayer can be considered during trial after the commissioner is examined. In view of Ext.P2, I am of the view that it is better that the commissioner submits a proper report and plan even before the suit goes for trial. I set aside Ext.P5 and allow IA No.623 of 2004. The commissioner will also submit report as requested by the respondent in Ext.P2. Both parties are permitted to submit work memos before the commissioner. Remuneration payable to the commissioner will be fixed by the court below and such remuneration will be shared equally by the parties.

PIUS C. KURIAKOSE, JUDGE

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